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C O N F I D E N T I A L SECTION 01 OF 02 PANAMA 000629

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SUBJECT: PANAMANIAN SUPREME COURT FRACAS BLURS GOVERNMENT  
FOCUS ON SOCIAL SECURITY REFORM

Classified By: Ambassador Linda E. Watt for reasons 1.4 (B) & (D).

1. (C) A public row pitting one Supreme Court Justice against three others has incited vehement public demands for the dismissal of all nine justices. On March 10 the Panamanian government (GOP) institutionalized those demands by forming a State Justice Commission (SJC) comprising state officials and the National Bar Association president, with a mandate requiring it to devise by early September a structural solution to the Court "crisis." Panamanians rightly view the Court as ineffectual, highly politicized, and corrupt. Although the GOP could have seized this opportunity to do some long-overdue house cleaning at the Court -- a key to fulfilling its anti-corruption pledges -- it evidently fears spending political capital and distracting its focus from its burgeoning, contentious domestic legislative agenda. That agenda includes first of all reform of Panama's Social Security system (CSS), which the GOP plans to announce in coming weeks, as well as a planned referendum, possibly early in 2006, to decide not-yet-announced plans to widen the Panama Canal. The GOP is loath to endanger either priority, which explains its reluctance at this moment to take on the Court. End Summary.

2. (C) Unseemly public mudslinging among four Supreme Court justices (three against one) in early March has provoked a groundswell of popular demands for the dismissal of all nine Justices. On March 2, Justices Hoyos, Salas, and Spadafora publicly accused Justice Arjona of endangering the separation of powers and the independence of the judicial branch of government by engaging in "illegal" administrative practices. Arjona shot back on March 3, charging the three with freeing suspects in narcotrafficking and murder cases, impeding access to public information, and countenancing international arms trafficking. As charges and counter-charges jostled for space on the front pages of Panama's dailies, Attorney General Ana Gomez in a March 4 letter asked National Assembly President Jerry Wilson to invite Arjona to testify.

3. (C) Observers who thought AG Gomez's letter reflected a concerted GOP strategy to eliminate Hoyos, Salas, and Spadafora soon were proved wrong as media, NGOs, and Panamanians from all walks of life vented their fury on the Court's alleged incompetence and corruption. Amid strident calls for the entire Court to resign, President Torrijos on March 10 agreed to appoint Gomez and Wilson to a State Justice Commission (SJC) that would include Chief Justice Troyano, Ombudsman Tejada, and National Bar Association President Carlos Vasquez. The SJC is charged with finding a solution to the Court crisis within 180 days, that is by early September 2005.

4. (C) (Comment: By forming the commission, Torrijos in effect has decided to procrastinate. He has also given the impression, which may not turn out to be true, that he will give civil society a veto over his policy on the Court, when it is eventually formulated. The Assembly has the constitutional power to impeach Justices, who serve 10-year terms, but never successfully has exercised that power. Salas and Spadafora are Moscoso nominees. Hoyos is a Perez Balladares nominee whose term ends in December 2005. Arjona, a Moscoso nominee who has proved to be an independent-minded political maverick, has been a long-time Embassy confidant. He has accused the other justices of accepting payoffs from criminals and estimates that he has cast the lone dissent in perhaps 50 Supreme Court votes where the majority showed "no concern" for the evidence or the seriousness of the cases. End comment.)

Where's the Beef?

5. (C) In a March 4 meeting with POL Counselor, Justice Arjona claimed that the charges against him were frivolous and based on personal vendettas stemming from the persistence of his lone, dissenting votes on many Court decisions. The other justices barely tolerate him, Arjona said. In an effort to force him off the Court, Arjona recounted, former Supreme Court President Pereira Burgos confiscated his Court-paid car in Spring 2004, then stopped paying his staff. In desperation, Arjona turned to then-Minister of Economy and Finance Norberto Delgado, who proposed paying Arjona's staff from the Attorney General's office. That is the purported basis, Arjona explained, for the charges against him of administrative impropriety and undermining the separation of powers. Among Embassy contacts, none believe that the

accusations against Arjona are anything but political payback.

16. (C) Arjona's charges against Hoyos, Salas, and Spadafora are much more serious and substantive. Specifically, Arjona has questioned their April 2004 decision to free Lorena Henao Montoya (sister of notorious drug trafficker Arcangel Henao Montoya), who was subsequently arrested by Colombian authorities. Also, Arjona is blaming the three for impeding an investigation into the use of millions of dollars of Taiwan-donated funds in the Fundacion Mar del Sur, paid to First Lady Ruby Moscoso, former President Moscoso's sister. In addition, Arjona faults the three justices for freeing suspected Israeli arms trafficker Shimon Yelinek in the Otterloo case in March 2004,<sup>1</sup> presumably for payoffs.

Comment

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17. (C) The sudden and unexpected upsurge of popular sentiment against Panama's Supreme Court presented the Torrijos administration with an opportunity to grasp a politically acceptable solution to its perceived corruption and incompetence. Since winning office in May 2004, Torrijos and his cabinet have agonized over the best way to reform the Court in a way that would respect the constitution and be seen as politically neutral while forcing some of the more egregious Justices from the bench. Faced with the imminent unfolding of one of its principal domestic priorities -- a campaign to reform social security (CSS) is already underway, while the details of the reforms and possibly violent street demonstration are expected soon -- the GOP has refused to allow itself to become distracted by lesser priorities, such as the Court.

WATT